SUBPARAGRAPH (i)

"At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 6th day of September., two thousand one.

PRESENT:

HON THOMAS J. MESKILL,
HON. RALPH K. WINTER,
HON. CHESTER J. STRAUB,
Circuit Judges, FILED 9/6/01

GARY R. WALL, WILLIAM COOKSEY SR, STEPHEN MANOS,

Plaintiffs-Appellants,

SUMMARY ORDER
NO. 00-9004

v.

HARRIET ROMAN,

Defendant,

ROBERT M CHEVERIE, CHARLES LECONCHE, DOMINICK LOPREATO, Trustee, JOHN PEZZENTE, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, VERE O. HAYNES, ROBERT D. LUSKIN, MICHAEL S. BEARSE, General Counsel LIUNA, FRANK FREEMAN, LABORERS' LOCAL 230,

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Defendants-Appellees,

Appearing for Appellants:	Gary R. Wall, Wethersfield, CT., *pro se*; William Cooksey, Sr., Hartford, CT, *pro se*; Stephen Manos, Glastonbury, CT.*pro se*.

Appearing for Appellee:	Robert M. Cheverie, Cheverie & Associates (John T. Fussell, on the brief), East Hartford, CT.
Appearing for Appellee Robert D. Luskin	Terrence G. Reed, Alexandria, VA

Appeal from the United States District Court for the District of Connecticut (Janet C. Hall, Judge)

AFTER ARGUMENT AND UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGE AN DECREED that the orders of the District Court are hereby AFFIRMED.

Plaintiffs-Appellants Gary R. Wall, William Cooksey, Sr., and Stephen Manos, *pro se*, appeal from orders of the United States District Court for the District of Connecticut (Janet C. Hall, *Judge*), dismissing their complaint pursuant to Fed. R. Civ. P. 12(b)(6), denying

their motion to set aside the judgment, and denying their motion for leave to amend their complaint.

The facts giving rise to this action are described in this Court's opinion in *Wall v. Construction & General Laborers' Union, Local 230*, 224 F. 3d 168(2d Cir. 2000). The plaintiffs filed a second amended complaint pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO") alleging violations of the civil remedy provisions of RICO, 18 U.S.C. 1964(c), and arguing that the defendants had deprived the plaintiffs of intangible property rights, including the rights to union membership, employment, and due process, and the right to vote in union affairs, as well as entitlement to their pensions. The defendants moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) and the plaintiffs moved to amend the

Complaint. In July 2000, the District Court granted the motion to dismiss and denied the motion to amend. The District Court concluded that the plaintiffs had failed to establish the existence of two predicate acts required to demonstrate a RICO violation and, as such, there was no need to address the remaining elements of a RICO claim. In dismissing the complaint, the court noted that, in light of the practice of broadly construing *pro se* complaints, it has repeatedly informed the plaintiffs of RICO pleading requirements and had given the plaintiffs numerous opportunities to replead and resubmit facts showing the existence of predicate acts, to no avail. As to the procedural due process claim against defendant Robert D. Luskin, the District Court found that liability did not attach because of the plaintiffs had not alleged that Luskin was a Department of Justice employee or that he acted at the direction of the Department of Justice. However, the District Court granted the plaintiffs leave to amend with respect to this claim. Additionally, the District Court denied the plaintiffs' requests to add an equal protection

claim against Luskin, to add Gene Julian as a defendant, to clarify, and for further discovery.

After judgment was entered, the plaintiffs filed a motion for reconsideration, arguing, *inter alia*, that the District Court had "made unreasonable departures from well founded precedents and findings of the Circuits and U. S. Supreme Court" regarding RICO violations and that such departures constituted an abuse of discretion. Thereafter, the plaintiffs filed a notice of appeal and later moved to amend their complaint. The District Court denied the motion to amend in light of the pending appeal in the Court. The defendants filed a motion to dismiss the plaintiffs' amended complaint, which the District Court also denied for lack of jurisdiction. The District Court later denied the reconsideration motion.

We review *de novo* a district court's dismissal of claim pursuant to Fed. R. Civ. P. 12(b)(6). See *Cooper v. Parsky*, 140 F.3d 433,440(2d Cir. 1998). We "tak[e] all factual allegations as true and constru[e] all reasonable

inferences in the plaintiff's favor." *Lee v. Bankers Trust*, 166 F.3d 540, 543 (2d Cir. 1999). A district court denying a motion for relief from a final judgment pursuant to Fed. R. Civ. P. 60(b) is reviewed for abuse of discretion. *See Transaero, Inc. v. La Fuerza Aerea Boliviana*, 162 F. #d 724, 729 (2d Cir. 1998), *cert. Denied*, 526 U. S. 1146 (1999). "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Id.*

The District Court properly dismissed the RICO complaint based on its conclusion that the plaintiffs had not established the elements of RICO claim. While the District Court's order did not specifically address the plaintiffs' allegations with respect to defendant Vere O. Haynes, a review of the claims against him reveals that they also fail sufficiently to allege predicate acts for purposes of RICO.

Further, the District Court was correct in denying the plaintiffs' motion to set aside the judgment. To the

extend that the plaintiffs' motion was brought pursuant to Rule 59(a), reliance on this section was improper, as the section permits a motion for a new trial and, here, there was no trial. To the extent that the plaintiffs sought to alter or amend the judgment pursuant to rule 59(b), the motion, if applicable, was untimely because it was filed more than ten days after the entry of judgment. Finally, to the extend that the plaintiffs sought to set aside the judgment pursuant to Rule 60, there is no merit to their motion.

We now turn to the District Court's denial of the plaintiffs' request to amend their complaint with regard to their due process claims against defendant Luskin. The District Court initially gave the plaintiffs thirty days from July 11, 2000, the date of its dismissal of the complaint, to replead their claims against Luskin. However, the court improperly entered judgment on July 14, 2000, three days after the date of the dismissal. Thus, the plaintiffs' notice of appeal, filed on July 31, 2000, was an appeal from a non

final order, because the thirty-day period for repleading had not yet expired. Nonetheless, we hold that the District Court's judgment dismissing the case became final on August 10, 2000, thirty days from its initial dismissal, and we construe the plaintiffs' appeal as being from the final judgment. *See Festa v. Local 3 Int'l Bhd. of Elec. Workers*, 905 F. 2d 35, 37 (2d Cir. 1990) ("[S]ince the deadline imposed by the district court for amendment has passed, we will treat the present appeal as having been timely filed after the dismissal by the district court became final.") We accordingly have jurisdiction to consider the issue. We find that the District Court properly denied the plaintiffs' motion to amend, because that motion was ultimately filed on August 22, 2000, more than thirty days after the court's July 11 dismissal.

We have considered the appellants' remaining arguments and find them to be without merit. For the reasons set forth above, we AFFIRM the judgment of the District Court.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK

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Signed by: Lucille Carr 9/6/01

SUBPARAGRAPH (ii)

"UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GARY R. WALL,
WILLIAM COOKSEY SR
STEPHEN MANOS

JUL 14 12:43 PM '00
FILED

v.

3:97CV2502 JCH

ROBERT LUSKIN, VERE O HAYNES,
MICHAEL S. BEARSE, LABORS LOCAL 230,
LABORERS' INTERNATIONAL UNION,
DOMINICK LOPREATO, JOHN PEZZENTE,
CHARLES LECONCHE, ROBERT CHEVERIE,
HARRIET ROMAN, FRANK FREEMAN,
LUSKIN/COIA/LOPREATO GROUP,
"L.C.L" THE ENTERPRISE

JUDGMENT

This matter came on before the Honorable Janet C. Hall, United District Judge, as a result of defendants' motions to dismiss.

The Court has received all of the papers filed in conjunction with the motion and hear oral argument. On July 12, 2000, a Ruling on Pending Motions entered granting the defendants' Chevrie, et al motion to dismiss

with prejudice except that it is without prejudice as to the due process claim only.

Therefore, it is ORDERED and ADJUDGED that judgment is entered for the defendants and the case is closed.

Dated at Bridgeport, Connecticut, this 14th day of July, 2000.

KEVIN F. ROWE, Clerk
By: Chrystini Cody
Deputy-in-Charge

Entered on Docket_____"

SUBPARAGRAPH (iii)

"United States Court of Appeals
for the Second Circuit
United States Court House
40 Foley Square
New York 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 15th day of November two thousand one.

_____
Wall

v. Dkt No. 00-9004

Cheverie Filed 11/15/01 2d Cir

A Petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellants Gary R. Wall, William Cooksey Sr., and Stephen Manos,

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT
ROSEANN B. MACKENCHNIE, Clerk

By: Arthur Heller
Administrative Attorney

Nov 15 2001"

SUBPARAGRAPH (iv) N/A

SUBPARAGRAPH (v)

"C. NATURE OF THE CASE

This action is against an enterprise 18 U.S.C. 1961(4) and the entities that are part of the enterprise 18 U.S.C. 1961(3) and the defendant person's 18 U.S.C. 1961(3) that are associates of said enterprise. For substantive violations of 18 U.S.C. 1962(b)(c)(d), 18 U.S.C. 1961(1)(5) from October 15, 1970 "effective date RICO enterprise".

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Racketeering injury's in the meaning of 18U.S.C. 1961 (5) starting 1985 and continuing on by and through the "Operational Agreement" February 13, 1995 to present day, with no determinable completion date.

D. CAUSE OF ACTION

The plaintiff allege that the following constitutional right and privileges have been violated. Our intangible property rights, LMRDA membership rights, our employment rights, our rights to self-determination, as provided by the LMRDA and our constitutional right of due process.

CLAIM 1: The plaintiffs allege that the following Federal Statutes have been violated 18 U.S.C.1962(b)(c)(d), 18 U.S.C.1961(1)(5) 18 U.S.C. 1951, 18 U.S.C. 1951(b)(2), 18 U.S.C. 1341, 18 U.S.C.1343, 18 U.S.C.2, 18 U.S.C. 1512, 29 U.S.C. 411, 29 U.S.C. 401, 29 U.S.C. 530, 29 U.S.C. 501, 18 U.S.C. 1959 in the Control and Maintenance of 18 U.S.C. 1961(4)."

SUBPARAGRAPH (vi)

l. Copy of January 17, 2001 letter address to Appeals Clerk United States District Court 915

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Lafayette Boulevard, Bridgeport, Connecticut 06604 from Gary R. Wall regarding the non entry of D.C. Dkt. #178 RE: 60(b) motion.

2. Copy of transcript of tape July 30, 1997 D.C. Dkt.#29 Appellate Attachment #4 29 U.S.C. 530 assault with multiple Hobbs Act violations committed against and on Petitioner Stephen Manos in his capacity as an individual and Vice President of Laborers' Local 230.

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January 17, 2001

Appeals Clerk
United States District Court
915 Lafayette Boulevard
Bridgeport, Connecticut 06604

RE: Case No. 3:97:CV 02502 (JCH)

Dear Ms. Warren:

In preparing my appeal in 397CV02502(JCH) due February 5, 2001, I noticed that the Index of the Record on Appeal stops at District Court Docket #177. The District Court Dockets run to dockets number 181. Docket #178 is an important docket. It is a Rule 60(b)(6) motion. Would you please send a corrected record to the Second Circuit and the parties listed below.

Thank you.

Gary R. Wall, Pro Se
60 Carriage Hill Drive
Wethersfield, Connecticut 06109
860-529-2651 860-563-5915

c: United States Court of Appeals
Ms. S. Washington – Goeloc
United States Court House
40 Foley Square
New York, New York 10007

Mr. John T. Fussell
Robert M. Cheverie Associates
333 East River Drive
East Hartford, Connecticut 06108-4201

Mr. Terrence G. Reed
120 N. Street Asaph Street
Alexandria, Virginia 22314

Transcript : July 30, 1997 Assault on Stephen Manos

Those heard on tape :

Stephen Manos, Vice-President—SM
Charles LeConche, Business Manager—CL
Ted Grabowski President—TG
Wayne Silva, Executive Board—WS
Restaurant Owner [Joseph or John Fuschi]—JF
Frank Freeman, Sergeant-at-Arms [Drinking in bar]—FF
William LeConche, Brother of Charles LeConche [Drinking in Bar]—WL

Those also present :

Leonard Granell Jr., Recording-Secretary
John Pezzenti, Secretary-Treasurer
James Lawson, Executive Board
Don Douville, Auditor
Lloyd Lecky, Auditor
William Del Gaizo, Auditor
Thomas Brockett, Attorney [Cheverie & Associates]
Vere Haynes, Vice President, Laborers International Union of North America

SM : Now. This ad. It cost eleven thousand ?
CL : What ad ?
SM : For the Times [New York Times]
CL : Yeah
SM : Do you know if there were any other set-up costs involved ? What was the total amount ?
CL : That's it.
SM : Eleven grand. O.K. Now....
CL : That's none of your business
SM : Why isn't it any of my business ?
CL : That's a <u>District Council</u> matter.
SM : It's still my money. My dues are paying for that.
CL : That's a <u>District Council</u> matter, approved by the delegates elected by the.....
SM : What was the vote, by the way ? Was it unanimous ?
CL : One "No".
SM : Yeah. Who?
CL : Ron Nobili.
SM : Oh, the guy you ostracized.
CL : Ostracized!

Transcript : July 30, 1997 Assault on Stephen Manos

TG : I don't think.....I don't think that this is the platform for District Council matters.
SM : It's a platform for my dues.
CL : You don't belong.....
SM : My dues that I pay.
CL : Why'd you call Ted Grabowski & try to solicit a vote against John Silva, Asshole !
SM : Because I'm a member & I have a right...I have a right to lobby.
CL : You don't have a right...
SM : I got a right to lobby
CL : You haven't got the right to Fuckin' do anything with the Council.
SM : O.K. Fine.
CL : And stay the Fuck out of my business !
SM : That comes.....Hey !
CL : Stay the Fuck out of my business!
SM : That comes.....That'll come later.
CL : Steve, you're about that Fuckin' close for me ripping your Fuckin' throat out personally !
CL : Fuck the.....!
SM : Don't threaten me !

[LeConche (standing) violently throws a napkin, striking Manos (seated) in the chest.]

Wayne Silva [to LeConche] : Hey! Hey! Watch it !
CL to SM : Fuck you !
SM : Don't threaten me !
CL : Fuck you! It ain't a threat. It's a Fuckin' promise!
SM : What did you say ?

[The enraged LeConche rushes towards Manos but is restrained by two Union officials.]

CL : You heard me! Cocksucker ! Cocksucker ! You Fuckin' heard me!

[Manos is attacked from his blind-side by Sergeant-at-Arms Frank Freeman & thrown violently backward over a wrought iron dining chair onto the ceramic-tile concrete floor.]

SM : Hey! Hey!

[Furniture is overturned as Freeman strikes Manos & the injured Manos gasps/moans.]

FF : Come on! Come on!
SM : Help me up Frankie.
FF : Out! Come on!
SM : Wait!..... Let me get my stuff! Let me get my stuff! I want to get.....! All right.

Transcript : July 30, 1997 Assault on Stephen Manos

[Freeman grabs & pulls Manos & prevents him from retrieving his personal belongings.]

FF : Somebody else will get your shit!

JF (restaurant owner), [unlocks side door] ***: No , no wait! Let me open...I open for you. I open for you. Just lock the door. All right?***

[Freeman throws Manos into street through side entrance doorway & closes the door.]

FF : Get the Fuck out!

SM [standing in street & speaking through the closed glass door] ***: Can I get my stuff ?***

[William LeConche & Charles LeConche run out of main door of restaurant & pursue Manos in the street as Freeman follows & intervenes.]

WL : What are you doing ? You going after my brother ? You going after my brother?
WL : You piece of shit!
SM : Get him off me Frank.
WL : You piece of shit!
CL : Get the Fuck out.....you cocksucker!
FF : All right Charlie!
CL : You better get out of here.....!
FF : All right!
SM : Get me to my car! Get me to my car!
WL : My brother....
CL :Your car...You Fuckin' piece of shit!
WL : You say something to my brother you asshole!
FF : Where's your car ?
SM : Right there. Right there!
WL : Don't you ever talk to my brother! You hear me?
Unknown : Hey Jimmy! Where's your car ?
FF : Get in your car.
SM : O.K. Frank. Thanks Frank.
CL : Do yourself a favor. Don't show up for a while! We own you now you Fucker!
WL : You talk to my brother again you got problems!

[Manos flees in his car, immediately makes a complaint in person to a police officer, & returns to his home to be personaly greeted by LIUNA IG Investigator **Sheryl McLaughlin**, & then goes to *Manchester Memorial Hospital Emergency Room* for treatment.]